



BOARD OF COUNTY COMMISSIONERS
OF PITKIN COUNTY, COLORADO *ET AL.*

186 IBLA 288

Decided November 17, 2015



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Interior Board of Land Appeals
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Appeal from four decisions of the Deputy State Director, Colorado State Office, Bureau of Land Management, dated August 14, 2014, affirming the suspension of operations and production on oil and gas leases. SDR CO-13-08, CO-14-15; SDR CO-13-07, CO-14-14; SDR CO-13-05, CO-14-13; SDR CO-13-06, CO-14-12.

Motions to dismiss granted; appeals dismissed.

1. Administrative Procedure: Standing--Oil and Gas Leases: Suspensions

Where, on appeal from a decision on State Director Review, an appellant fails to make an adequate showing of how any legally cognizable interest has been adversely affected by the decision, such an appellant will be deemed to lack standing to appeal and the appeal will be dismissed. In order to establish standing, the threat of injury must be more than hypothetical; it must be real and imminent. If the adverse impact complained of is contingent upon some future occurrence or is merely hypothetical, there is no adverse effect and an appellant will not have standing to pursue its appeal.

2. Administrative Procedure: Standing--Oil and Gas Leases: Suspensions

Where appellant organizations argue that BLM's approval of suspensions of operations (SOPs) on oil and gas leases has required them to divert resources away from their operations and programs, but fail to show a causal relationship between BLM's action and the injury alleged, they have not shown that they have a legally cognizable

interest that has been or is likely to be substantially injured for purposes of standing under 43 C.F.R. § 4.410(d).

3. Administrative Procedure: Standing--Oil and Gas Leases: Suspensions

Allegations by local governments that BLM's approval of suspensions of operations on oil and gas leases will result in a loss of tax revenue are insufficient to establish standing under 43 C.F.R. § 4.410(d), where such loss is contingent and speculative and so attenuated on a possible chain of causation that there is no causal connection between the approved action and the injury alleged.

4. Administrative Procedure: Standing--Oil and Gas Leases: Suspensions

A local zoning ordinance that prohibits oil and gas development on Federal lands is preempted by Federal mining laws. Such preemption does not cause an adverse impact to a legally cognizable interest for purposes of standing under 43 C.F.R. § 4.410(d).

APPEARANCES: John M. Ely, Esq., Aspen, Colorado, for Pitkin County; Jan Shute, Esq., Glenwood, Colorado, for City of Glenwood Springs; Mike Chiropolos, Esq., Boulder, Colorado, for Town of Carbondale; Peter Hart, Esq., Carbondale, Colorado, Michael J. Freeman, Esq., and R. Benjamin Nelson, Esq., Denver, Colorado, for Wilderness Workshop; Charles A. Breer, Esq., Longmont, Colorado, for Ursa Piceance LLC; Rebecca W. Watson, Esq., Nora R. Pincus, Esq., and Jennifer Cadena Fortier, Esq., Denver, Colorado, for SG Interests I, Ltd.; Arthur R. Kleven, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

The Board of County Commissioners of Pitkin County (Pitkin County), the City of Glenwood Springs (Glenwood Springs), and the Town of Carbondale, Colorado (Carbondale) (collectively, Local Governments) and Wilderness Workshop (Workshop) (collectively, Appellants) have appealed four August 14, 2014, decisions of the Deputy State Director, Colorado State Office (CSO), Bureau of Land Management (BLM). The CSO issued these decisions on State Director Review (SDR) (SDR Decisions), affirming decisions issued by BLM's Colorado River Valley Field Office (CRVFO) granting suspensions of operations and production (SOPs) on oil and

gas leases held by Ursa Piceance LLC (Ursa) or SG Interests I, Ltd. (SG) (together, Ursa/SG), and subsequent decisions approving applications to renew the SOPs.

In IBLA 2014-277, the Local Governments appeal the CSO's decision upholding two decisions of the CRVFO, one dated April 9, 2013, granting Ursa's application for an SOP on 7 oil and gas leases¹ located in Pitkin, Garfield, and Mesa Counties, Colorado, and the second dated March 31, 2014, approving Ursa's requests to renew the SOP.² By order dated October 16, 2014, the Board granted Ursa's motion to intervene in this appeal.

In IBLA 2014-278, the Local Governments appeal the CSO's decision upholding two decisions of the CRVFO, one dated April 9, 2013, granting SG's application for an SOP on 18 oil and gas leases in Garfield, Pitkin, Gunnison, and Mesa Counties, Colorado, in the White River National Forest (WRNF),³ and the second dated March 31, 2014, granting SG's request to renew the SOP.⁴ By order dated October 10, 2014, the Board granted SG's motion to intervene in this appeal.

In IBLA 2014-290, the Workshop appeals the CSO's decision upholding the CRVFO's April 9, 2013, decision granting SG's application for an SOP on the above-referenced 18 oil and gas leases held by SG, and the CRVFO's March 31, 2014, decision granting SG's application to renew the SOP.⁵ By Order dated October 10, 2014, the Board granted SG's motion to intervene in this appeal.

In IBLA 2014-291, the Workshop appeals the CSO's decision upholding, on SDR, the CRVFO's decision dated April 9, 2013, approving Ursa's application for an SOP on the above-referenced 7 oil and gas leases, and the CRVFO's decision dated March 31,

¹ Oil and Gas Lease Nos. COC-66706, COC-66707, COC-66708, COC-66709, COC-66710, COC-66711, and COC-66712.

² The Local Governments' requests for SDR of these two decisions were docketed as SDR CO-13-08 and CO-14-15, respectively.

³ Oil and Gas Lease Nos. COC-6687, COC-6688, COC-6689, COC-6690, COC-6691, COC-6692, COC-6693, COC-6694, COC-6695, COC-6696, COC-6697, COC-6698, COC-6699, COC-66700, COC-66701, COC-66702, COC-66908, and COC-66909.

⁴ The Local Governments' requests for SDR of these two decisions were docketed as SDR CO-13-07 and CO-14-14, respectively.

⁵ The Workshop's requests for SDR of these two decisions were docketed as SDR CO-13-05 and CO-14-13, respectively.

2014, granting Ursa's request to renew the SOP.⁶ By order dated October 16, 2014, the Board granted Ursa's motion to intervene in this appeal.

By order dated October 27, 2014, the Board granted a joint motion by BLM, Ursa, and SG to consolidate these four appeals.

Ursa/SG and BLM have filed motions to dismiss the appeals, arguing that the Local Governments and the Workshop lack standing to appeal and that the cases are not ripe for review by the Board. In particular, Ursa/SG and BLM argue that the Local Governments and the Workshop are not adversely affected by the SOPs upheld in the CSO's decisions because those suspensions have not caused, and are not substantially likely to cause, injury to their interests.

For the reasons discussed below, we conclude that the CRVFO's decisions, as upheld by the CSO, have not adversely affected the interests of the Local Governments or the Workshop. Accordingly, we grant the respective motions of Ursa/SG and BLM to dismiss the subject appeals for lack of standing.

BACKGROUND

In December 1993, the Forest Service, U.S. Department of Agriculture, issued a Record of Decision (ROD) allowing certain lands in the WRNF, including the lands overlying the Leases held by Ursa and SG, to be made available for oil and gas leasing. The Forest Service ROD was supported by an Environmental Impact Statement (EIS), also issued in 1993 (1993 EIS), prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2012), that considered the potential environmental consequences of oil and gas leasing in the WRNF. In 2002, the Forest Service issued the WRNF Land and Resource Management Plan—2002 Revision and its associated EIS (2001 EIS), which incorporated by reference the 1993 EIS. Under the plan, any parcels offered for lease in the WRNF would be subject to certain stipulations, including, *inter alia*, a no-surface occupancy (NSO) stipulation precluding operations from June 1 through October 1, a stipulation precluding activities on slopes greater than 60%, and a stipulation imposing timing limitations on operations from December 1 through April 30. See note 7 *infra*.

In 2003, BLM obtained consent from the Forest Service to offer for sale the parcels on which SG and Ursa were the high bidders and for which they received leases, subject to the stipulations included in the WRNF plan. BLM issued the above-referenced 18 leases to SG and 7 leases to Ursa between June 1, 2003, and

⁶ The Workshop's requests for SDR of these two decisions were docketed as SDR CO-13-06 and CO-14-12, respectively.

October 1, 2003, with 10-year primary terms. None of the Appellants protested the sale of any of the 25 parcels subject to this appeal.

The Local Governments and the Workshop, among others, did file protests to BLM's 2004 decision to offer for sale three nearby parcels, also located in the WRNF.⁷ BLM issued decisions dismissing the protests. In *Board of Commissioners of Pitkin County [Pitkin County]*, 173 IBLA 173 (2007), the Board reversed BLM's decisions, finding that BLM had violated NEPA because the agency "conducted no environmental analysis and prepared no environmental document of its own," nor had it adopted the environmental review documents completed by the Forest Service, i.e., the 1993 and 2001 EISs. 173 IBLA at 183-84. Before the Board, BLM attempted to rely on the environmental documents prepared previously by the Forest Service, i.e., the 1993 EIS and the 2001 EIS. The Board addressed "whether BLM complied with its own, independent NEPA responsibilities in deciding to include these national forest lands within its May 2004 lease sale." *Id.* at 181 (citing *Wyoming Outdoor Council*, 159 IBLA 388, 401 (2003); *Colorado Environmental Coalition*, 125 IBLA 210, 215-16 (1993)). Because BLM had conducted "no environmental analysis and prepared no environmental document of its own," and had not adopted the environmental review documents completed by the Forest Service, the Board concluded that "BLM failed to comply with NEPA when it included the three parcels at issue in an oil and gas lease sale which did not prohibit surface occupancy on these parcels." *Id.* at 183-84. The Board therefore held that BLM was required to either independently review and adopt Forest Service pre-leasing NEPA documentation as its own, complete its own environmental review and prepare the appropriate documentation, or otherwise rely on a BLM-prepared pre-leasing analysis. *Id.* at 182-84. Given the NEPA deficiency, the Board reversed BLM's dismissal of the protests filed by Pitkin County and the Workshop.

Following the Board's reversal in *Pitkin County*, by decision dated August 19, 2007, "BLM declared the three leases invalid *ab initio*, and withdrew them effective the date of issuance." See SDR Decisions at 10; see also BLM's Motion to Dismiss for Lack of Jurisdiction (BLM's Motion to Dismiss) at 4 n.5.

⁷ Contex Energy Company, an agency for EnCana Oil & Gas (USA), Inc., was the high bidder for those three parcels, identified as COC-67538, COC-67540, and COC-67541 (referred to as parcels 538, 540, and 541, respectively), none of which are involved in the present appeals before the Board. Parcel 538 included an NSO stipulation which prohibited exploration, drilling, and development activity from June 1 through October 1. Parcel 540 was subject to an NSO stipulation which precluded activities on slopes steeper than 60 %. Parcel 541 included a prohibition on exploration, drilling, and development from December 1 through April 30 to protect elk and mule deer winter range. *Pitkin County*, 173 IBLA at 176.

In May 2011, SG submitted to BLM an application to “unitize” its leases in the proposed Lake Ridge Unit. BLM’s Motion to Dismiss at 4. The Local Governments and the Workshop then submitted numerous comments to BLM opposing unitization, including, among other issues, concerns over NEPA compliance. In August 2012, Ursa applied to unitize its leases in the proposed Wolf Springs Unit. Comments objecting to Ursa’s application followed. BLM states that in light of the comments and legal objections raised, it delayed making a decision on the unitization applications submitted by Ursa and SG. *Id.*

During October 2012 to January 2013, with its unit proposal delayed, SG filed six applications for permits to drill (APDs) on six leases, including an APD for the unit obligation well(s) for the proposed Lake Ridge Unit. *Id.* Likewise, in April 2012, Ursa filed an APD for the unit obligation well for the proposed Wolf Springs Unit. *Id.*

As noted, SG’s and Ursa’s leases were issued by BLM in 2003 with 10-year terms. See BLM’s Motion to Dismiss at 2. With the end of the 10-year terms approaching, Ursa and SG submitted requests for SOPs on their respective leases pursuant to 30 U.S.C. § 209 (2012) and 43 C.F.R. § 3103.4-4. BLM’s Motion to Dismiss at 4. The CRVFO issued decisions granting the SOPs, finding that granting suspensions was in the interest of conservation of natural resources. The CRVFO stated that it needed to conduct further NEPA analysis in accordance with *Pitkin County*:

[T]he BLM has identified the need to address a NEPA deficiency associated with the decisions to issue the Leases. In particular, now that Ursa [or SG] has proposed a unit and development activities for the Leases, and in consideration of comments from interested parties that have asserted the Leases were issued in violation of NEPA and other statutes, the BLM has identified the need to remedy a defect at lease issuance (*see Board of Commissioners of Pitkin County*, 173 IBLA 173 (2007)), and has decided *it will undertake additional NEPA analysis addressing the decisions to issue the Leases to determine whether the leases should be voided, reaffirmed or subject to additional mitigation measures for site specific development proposals*. The BLM requires additional time to complete this effort. Review of the unit application and APD is delayed pending completion of that analysis and resolution of leasing decision issues. *No leasehold activities will be authorized until a NEPA analysis addressing the leasing decisions is completed.*

Apr. 9, 2013, CRVFO Decisions at 2-3 (emphasis added).⁸ In explaining that the need for additional NEPA analysis supported granting the requests for SOPs, the CRVFO stated:

In this instance, additional environmental analysis addressing the leasing decision will help assure that all potential environmental impacts associated with issuance of the leases are fully analyzed pursuant to NEPA procedures. *Additional environmental analysis will assist BLM in identifying whether the leases should be voided, reaffirmed or subject to additional mitigation measures for site-specific development proposals.* Therefore, suspension of the leases to perform additional environmental analysis on the leasing decision is in the interest of conservation and is warranted due to the abnormal delays in acting on the unit application and in processing and issuing decisions on any APDs caused by the BLM's need for that additional analysis. *Cf., NevDak Oil and Exploration, Inc., 104 IBLA 133, 138 (1988) (indicating that suspension would be in the interest of conservation for purposes of Section 39 if it would "permit BLM to determine how to best protect other resources").*

Id. at 5 (emphasis added). The CRVFO concluded: *"The BLM will not authorize any ground-disturbing activities during the period of suspension. Any operations such as road construction, site preparation, or drilling taking place on a suspended lease will automatically terminate the lease suspension."*⁹ *Id.* at 6 (emphasis added).

On May 6, 2013, the Local Governments and the Workshop each requested SDR of the CRVFO's decisions. Before the CSO issued decisions on the requests for SDR, Ursa and SG requested the CRVFO to renew the SOPs, which the CRVFO granted in decisions dated March 31, 2014. The SOPs as renewed by the CRVFO would be in effect until April 1, 2016, or would terminate earlier, if BLM "determines

⁸ In its decision, the CRVFO also noted that although "interested parties have argued that the BLM is prohibited from suspending the leases due to the alleged legal violations associated with decisions to issue the Leases," the NEPA inadequacy at lease issuance "makes the Leases voidable at the discretion of the BLM based on supporting remedial analysis." *Id.*

⁹ BLM allows for "casual use" during the suspension period. Field Decisions at 6. However, the oil and gas regulations define "casual use" to mean "activities that involve practices which do not ordinarily lead to any appreciable disturbance or damage to lands, resources and improvements. For example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicular movement except over established roads and trails are casual use." 43 C.F.R. § 3150.0-5.

the suspensions would no longer be in the interest of conservation or the EIS referenced in the decision is complete and a Record of Decision has been signed regarding the status of the leases.” SDR Decisions at 9.

On April 2, 2014, BLM published a Notice of Intent to prepare an EIS for oil and gas leases within the WRNF. 79 Fed. Reg. 18,576 (Apr. 2, 2014). BLM explained in the Notice that the CRVFO intended to undertake NEPA analysis to address the deficiency identified by the Board in *Pitkin County*. The analysis would consider the environmental impacts of previous decisions to issue 65 oil and gas leases from 1995 to 2012, and “determine whether these 65 leases should be voided, reaffirmed, modified with additional or different terms, or subject to additional mitigation measures for site-specific development proposals.” *Id.*

On August 28, 2014, the CSO issued the four SDR Decisions upholding the CRVFO’s approval of the requested SOPs and the subsequent renewals of those SOPs. The Local Governments and the Workshop filed appeals from the SDR Decisions, as identified above.

On January 21, 2015, and February 2, 2015, Ursa/SG and BLM, respectively, moved the Board to dismiss the appeals filed by the Local Governments and the Workshop on the basis that they lack standing to appeal and because their challenge is not ripe for Board review. On February 11, 2015, the Local Governments and the Workshop each filed a Response. On March 19 and 23, 2015, Ursa/SG and BLM, respectively, filed a Reply to the Responses. On April 3, 2015, the Local Governments filed a Sur-reply.

ANALYSIS

BLM and Ursa/SG argue that the Board should dismiss the subject appeals for lack of standing and ripeness. They assert that because the harms alleged are remote and contingent on future events, neither the Local Governments nor the Workshop are adversely affected by the SOPs. The crux of their argument is that when BLM completes the NEPA analysis the Board found lacking in *Pitkin County*, it will “determine whether the Leases should be voided, reaffirmed[,] or subject to additional mitigation measures for site-specific development proposals.” Apr. 9, 2013, CRVFO Decisions at 2. It is only then that Appellants may be able to allege harm from oil and gas development that is something other than speculative.

We agree that the injuries alleged by Appellants are contingent on a series of future occurrences that may or may not happen. As the Board stated in *Western Watersheds Project*, 185 IBLA 293, 299 (2015), “the threat of injury and its effect on the appellant must be more than hypothetical,” and “an injury must be an injury in fact; mere speculation that an injury might occur in the future will not suffice.” (Quoting *Colorado Open Space Council*, 109 IBLA 274, 280 (1989)). We therefore conclude that

BLM's SOP decisions do not adversely affect any interest of the Local Governments or the Workshop, and we dismiss their appeals for lack of standing.

A. *Standard of Review*

Under 43 C.F.R. § 3165.4(a), “[a]ny party adversely affected by the decision of the State Director after State Director review . . . may appeal that decision to the [Board] pursuant to the regulations set out in part 4 of this title.” The regulation at 43 C.F.R. § 4.410(a) requires an appellant to be both a “party to a case” and “adversely affected” by the decision, within the meaning of 43 C.F.R. § 4.410(b) and (d). *Western Watersheds Project*, 185 IBLA at 298; *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA 79, 81-86 (2005), and cases cited. An appeal must be dismissed if either element is lacking. *Western Watersheds Project*, 185 IBLA at 298; *Southern Utah Wilderness Alliance [SUWA]*, 140 IBLA 341 346 (1997); *Mark S. Altman*, 93 IBLA 265, 266 (1986).

As previously noted, none of the Appellants protested the inclusion of any of the 25 Leases in the lease sales of 2003. They expressed concern regarding the applications of Ursa and SG to unitize the Leases, and they objected to issuance of the SOPs and renewals. BLM states that “[i]f not parties to the cases over the sale and issuance of the subject leases, for the sake of this argument the Appellants are assumed to be parties to the cases over the SDR decisions.” BLM's Motion to Dismiss at 9. We will adopt the same approach and focus our attention on whether Appellants can demonstrate that they are adversely affected by the SOP decisions.

In accordance with longstanding Board precedent, 43 C.F.R. § 4.410(d) provides that a party to a case is adversely affected by a decision when it causes or is substantially likely to cause injury to a legally cognizable interest of the party.¹⁰ See, e.g., *Western Watersheds Project*, 185 IBLA at 298; *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA at 81-82. The legally cognizable interest must be shown to have been held by the appellant at the time of the decision that it seeks to appeal. See *Western Watersheds Project*, 182 IBLA 1, 8-9 (2012); *Center for Native Ecosystems*, 163 IBLA 86, 90 (2004). In addition, when an organization

¹⁰ In 2003, the Department amended the Board's regulation governing standing to appeal. 68 Fed. Reg. 33,794 (June 5, 2003). It added the following language: “A party to a case is adversely affected . . . when that party has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest.” 43 C.F.R. § 4.410(d). This amendment was a codification of the Board's standing requirements. See, e.g., *Theodore Roosevelt Conservation Partnership [Theodore Roosevelt]*, 178 IBLA 201, 206 (2009) (citing *Coalition of Concerned National Park [Service] Retirees*, 165 IBLA at 81).

appeals a BLM decision, it must demonstrate that one or more of its members has a legally cognizable interest in the subject matter of the appeal, coinciding with the organization's purposes, that is or may be negatively affected by the decision. *See, e.g., Western Watersheds Project*, 185 IBLA at 298-99.

The burden falls upon the appellant to make colorable allegations of an adverse effect, supported by specific facts, set forth in an affidavit, declaration or other statement of an affected individual that are sufficient to establish a causal relationship between the approved action and the injury alleged. *The Fund for Animals, Inc.*, 163 IBLA 172, 176 (2004); *SUWA*, 127 IBLA 325, 327 (1993); *Colorado Open Space Council*, 109 IBLA 274, 280 (1989). The appellant need not prove that an adverse effect will, in fact, occur as a result of the BLM action, but we have long held that the threat of injury and its effect on the appellant must be more than hypothetical. *See Missouri Coalition for the Environment*, 124 IBLA 216 (1992); *Donald K. Majors*, 123 IBLA 142, 145 (1992); *George Schultz*, 94 IBLA 173, 178 (1986). "Standing will only be recognized where the threat of injury is real and immediate. *Laser, Inc.*, 136 IBLA [271,] 274 [(1996)]; *Salmon River Concerned Citizens*, 114 IBLA 344, 350 (1990)." *Legal & Safety Employer Research Inc.*, 154 IBLA 167, 172 (2001). "[M]ere speculation that an injury might occur in the future will not suffice." *Colorado Open Space Council*, 109 IBLA at 280.

B. The Adverse Impacts Alleged by Appellants are Contingent and Hypothetical

[1] The actions undertaken and that are at issue in this appeal is BLM's approval of Ursa's and SG's requests for SOPs. Our present concern is whether the Workshop and the Local Governments have standing to appeal BLM's decisions approving the SOPs. The fate of the Leases will remain undetermined and unknown until some future date, when BLM completes its NEPA review, in compliance with the Board's decision in *Pitkin County*, and renders decisions on whether the Leases "should be voided, reaffirmed or subject to additional mitigation measures for site specific development proposals."¹¹ Apr. 9, 2013, CRVFO Decisions at 2; SDR Decisions at 13. As BLM explained, the agency will take no further action on the APDs submitted by

¹¹ Ursa and SG "strongly disagree that the BLM has the ability to 'void' or 'modify' the lease terms." SG Interests I, LTD. and Ursa Piceance LLC's Motion to Dismiss (SG/Ursa Motion to Dismiss) at 9 n.9. They point out that the Board did not order "BLM [to] prepare a new environmental analysis to 'void' the leases or 'modify' the leases with additional lease terms." *Id.* Their point is simply that BLM deems its future actions, following remedial NEPA review, to include voiding or modifying the Leases, and that those actions are hypothetical and contingent. The possibility (or likelihood) that Ursa and/or SG would challenge any decision to void or modify the Leases adds to the speculative and uncertain future of those Leases.

Ursa and SG, or on their unit applications, or authorize “leasehold activities” until the NEPA review is completed. Apr. 9, 2013, CRVFO Decisions at 2.

Appellants’ claims of adverse effect are necessarily contingent on a series of future occurrences, i.e., BLM’s NEPA review and ultimate decision based on that review. The injuries alleged by the Appellants thus are not “real and immediate.” *Laramie Energy II, LLC*, 182 IBLA 317, 325 (2012); nor are any such injuries a consequence of BLM’s decisions to suspend the Leases, which simply maintain the status quo pending completion of new NEPA. See Apr. 9, 2013 CRVFO Decisions at 6 (stating that as long as leases are suspended, “BLM will not authorize any ground disturbing activities,” and “[a]ny operations such as road construction, site preparation, or drilling taking place on a suspended lease will automatically terminate the lease suspension.”). As this Board has stated, “[t]he possibility” of being “adversely affected in the event of some future contingency, no matter how probable the prospect that the contingency will occur, does not confer standing.” *Woods Petroleum Co.*, 86 IBLA 46, 48 (1985). There must be a causal relationship between the action undertaken and the injury alleged.¹² *Powder River*, 180 IBLA at 45 (citing *Colorado Open Space Council*, 109 IBLA at 280); *Blackwood & Nichols Co.*,

¹² BLM and Ursa/SG argue that Appellants’ challenges are unripe for Board review. The Board has frequently observed that the requirements of ripeness and standing are generally related, for purposes of Board review, both arising from 43 C.F.R. § 4.410. *E.g. Powder River Basin Resource Council [Powder River]*, 180 IBLA 32, 43 (2010). The Board has not always been precise in its use and application of the doctrines of ripeness and standing. For example, in *Nevada Outdoor Recreation Association*, 158 IBLA 207, 209 (2003), the Board said that “[w]hen an adverse impact on a party is contingent upon some future occurrence, or where the adverse impact is merely hypothetical, it is premature for this Board to decide the matter.” The Board then found that BLM had not rendered a decision subject to appeal, and dismissed the appeal for lack of standing. See also *Seldova Native Association*, 161 IBLA 279, 286-87 (2004). In the present case, BLM has issued final decisions approving the disputed SOPs; our present concern is whether Appellants have standing to challenge those decisions. They may not base their claim to standing on contingent and hypothetical harms. As the Board made clear in *Woods Petroleum Co.*, 86 IBLA 46, 48 (1985), “[t]he possibility” of being “adversely affected in the event of some future contingency, no matter how probable the prospect that the contingency will occur, does not confer standing.” There must be a causal relationship between the action undertaken, i.e., the SOP decisions and the injuries alleged. The basis for our holding herein is that Appellants have failed to demonstrate standing to appeal from BLM’s SOP decisions.

139 IBLA 227, 229 (1997); *Petroleum Association of Wyoming*, 133 IBLA 337, 344 (1995); *Colorado Environmental Coalition*, 125 IBLA 287, 289-90 (1993); *Salmon River Concerned Citizens*, 114 IBLA at 347-51.¹³

The Board's ruling in *Colorado Open Space Council*, relied upon by BLM and Ursa/SG, supports our conclusion. In that case, the Board analyzed whether the appellants were adversely affected by BLM's approval of the unit operator's request for suspension of automatic elimination provisions of the unit agreement. In order to retain non-participating lands within the unit, the unit operator was required to conduct drilling operations by a certain date. The operator requested a suspension of the automatic elimination provisions and a tolling of the unit term. BLM granted a 2-year suspension, explaining that the "[w]ithout the existence of the unit agreement, each of those leases could be developed on an individual lease basis thus creating more surface disturbance and increasing the impacts on other resources." 109 IBLA at 277. The appellants argued before the Board that suspension of the automatic elimination provisions adversely affected their rights to use the lands in their pristine state and to work for their designation as wilderness lands. *Id.* at 278-79. The Board dismissed the appeal for lack of standing on the basis that there was no adverse effect.

The Board addressed the groups' arguments in terms of three possibilities. One, BLM could grant the suspension, as it did. Two, BLM could have denied the suspension, in which case the operator would have been faced with the immediate choice of either drilling or allowing automatic contraction. If it elected to drill, all acreage would have been retained within the unit. Three, there was the possibility that upon BLM's denial of the operator's suspension request, the operator would be unwilling or unable to timely commence drilling the required well, in which case all non-participating acreage would be automatically eliminated. However, unit contraction would not mean that the leases would terminate or expire, but they would be continued for their original term or for not less than 2 years, whichever was longer, and so long thereafter as oil or gas was produced in paying quantities. The Board drew the following conclusion from its review of the possible consequences of BLM's denial of the suspension:

¹³ BLM and Ursa/SG suggest this matter may become moot in the future, for instance because BLM might—after NEPA review—ultimately terminate the leases. However, the Board declines, on the basis of a possibility of future mootness, to deny standing to a party who currently shows it meets the requirements of 43 C.F.R. § 4.410. *See also Theodore Roosevelt*, 178 IBLA at 208 n.6 (in an oil and gas lease case, the fact that an environmental organization could later challenge a provision does not mean that it cannot now challenge it, provided the organization meets the standards of 43 C.F.R. § 4.410).

What is important to note is that either of the latter two possibilities would have resulted in the necessity of drilling in the immediate future in order for the lessees to protect their interests. Thus, to the extent that *development* of the lands may represent an effective impediment to their inclusion in a wilderness area, a decision *denying* suspension of the drilling requirements would have almost certainly accelerated that development.

109 IBLA at 284 (emphasis in original). The Board observed that the appellant groups could just as easily have protested BLM's denial of suspension "on the ground that the alternatives of either continued drilling or automatic exclusion of the non-participating acreage . . . made development of that acreage more likely in the next 2 years." *Id.* The Board stated: "Thus, we seem to be faced with a situation in which appellants could claim to be adversely affected irrespective of the actual decision by BLM on the issue being appealed." *Id.*

The Board concluded that even if BLM denied the suspension and the operator did not drill, allowing the unit to contract, it remained speculative as to whether Congress would ultimately designate the lands as wilderness:

The "actual or threatened injury" standard requires a concrete injury, not an injury to "abstract" interests. See Diamond v. Charles, 476 U.S. 54, 66-67 (1986); Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 40 (1976). To the extent that appellants are attempting to premise standing on the right to be free from the fear that development may, at some future point, occur, they are not alleging a "concrete injury," but rather attempting to vindicate an abstract interest. To the extent, however, that appellants are basing their challenge on the likelihood of physical impairment of the wilderness characteristics, the possible injury cannot fairly "be traced to the challenged action," since, as we have explained above, the decision being appealed has a neutral, if not beneficial effect, on actual development.

Id. at 286 (emphasis added). Accordingly, the Board dismissed the appeal for lack of standing on the basis that there was no adverse effect.

Since our decision in *Colorado Open Space*, we have uniformly recognized the principle that the harm complained of must be more than hypothetical; it must be "real and imminent." *Laramie*, 182 IBLA at 325; *see also Powder River*, 180 IBLA at 45.

The Board's opinion in *SUWA*, 148 IBLA 117 (1999), cited by BLM in support of its position that the Local Governments and the Workshop do not have standing to bring their appeals, is also instructive. There, *SUWA* challenged a BLM decision denying the organization's request for SDR of a decision granting suspension of an oil

and gas lease. In support of standing, SUWA stated that it is “dedicated to the preservation of the wilderness, wildlife and recreational values of the public lands of southern Utah,” and that its members “use and enjoy lands surrounding the Nine Mile Canyon and Horse Bench area, including the lands that will be harmed by the challenged action.” 148 IBLA at 118 (quoting Statement of Reasons at 5). The Board held that SUWA lacked standing because it was not a party to the case, but it made the following observation regarding SUWA’s alleged injury due to lease development:

SUWA has not shown that it has an interest that is adversely affected by the suspension. As noted by BLM, since Mission’s APD has not been approved by BLM, any drilling on the lease “will require a future decision by BLM approving the APD after completing appropriate review of the environmental and other impact which such drilling might entail.” Thus, *SUWA’s allegations of injury are hypothetical, rather than real and immediate.* See *Washington County, Utah*, 147 IBLA 373, 379 (1999).

Id. at 119 (emphasis added).¹⁴

In addition, BLM and Ursa/SG rely on *SUWA v. Palma*, in which the U.S. Court of Appeals for the Tenth Circuit (Tenth Circuit) dismissed an appeal brought by SUWA. See BLM’s Motion to Dismiss at 18-21; SG/Ursa Motion to Dismiss at 19. Although the Tenth Circuit ultimately resolved the case ripeness grounds, the court’s analysis provides clear support for the argument that Appellants lack standing to challenge the subject SOPs. In *SUWA v. Palma*, SUWA challenged applications for conversion of traditional oil and gas leases to combined hydrocarbon leases under the Combined Hydrocarbon Leasing Act, 30 U.S.C. § 226(n) (2012). Upon filing complete plans of operations in support of the applications, BLM was required by its regulations to suspend the leases until the plans were approved or rejected. 707 F.3d at 1147-48. Before the U.S. District Court, SUWA challenged BLM’s decisions deeming the leases suspended as of the date complete plans of operations were filed, and which the group

¹⁴ BLM acknowledges that the quoted language from *SUWA* constitutes dicta, and that the Board, in *Three Forks Ranch, Inc.*, 171 IBLA 323, 329 n.6 (2007), referred to its statements in *SUWA* regarding adverse effects as dicta. See BLM Motion to Dismiss at 14. However, there is no suggestion in footnote 6 of *Three Forks* that the Board questioned the correctness of the statements regarding standing it had made in *SUWA*. We read footnote 6 simply as a caution against misconstruing the breadth of its holding in *Three Forks*. Indeed, in subsequent cases, the Board uniformly recognizes the principle that the harm complained of must be more than hypothetical, but must be real and immediate. See *Laramie*, 182 IBLA at 325; *Powder River*, 180 IBLA at 45.

characterized as effectively creating new oil and gas leases.¹⁵ SUWA argued that the leases expired several years earlier when BLM failed to take the action necessary for lease suspension. The District Court dismissed SUWA's complaint for lack of standing, holding that SUWA had failed to show injury because it did not demonstrate that any of its members visited each of the leases at issue. *Id.* at 1155.

The Tenth Circuit held that the District Court had erred in its ruling. In the view of the Tenth Circuit, SUWA's allegations that its members' use and enjoyment of the lands would be impaired by oil and gas development were sufficient to demonstrate a concrete, particularized injury. *Id.* at 1156. However, the Tenth Circuit opined that the case was "more appropriately decided under the ripeness doctrine," *id.* at 1157,¹⁶ and held that the BLM decisions were "interim" decisions that were "part of the process of deciding whether to grant" lease conversions. *Id.* at 1159. The Tenth Circuit distinguished between the grant of oil and gas leases and the suspension of those leases, explaining that in a typical mineral leasing case, environmental plaintiffs do not have to wait until drilling permits have been issued before they may bring suit because issuance of a lease represents the irreversible and irretrievable commitment of public resources for private use. *Id.* at 1157-1159. Because the leases were in a suspended status, however, the Tenth Circuit ruled that the challenged decisions had no immediate impact on SUWA's interests. *Id.* at 1160.

In light of the suspensions, the Tenth Circuit determined that the challenged decisions would have no immediate impact on the interests SUWA sought to protect. *Id.* at 1160. Moreover, the Tenth Circuit was not persuaded that SUWA would be harmed by delayed review, stating that any harm to SUWA's interests "rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Id.* (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)). Until a future event, such as the grant of drilling permits, no oil and gas development would occur; meanwhile, SUWA's members could continue their enjoyment of the lands without disruption by the lessee, and their interests in the wilderness "will remain uninjured by the status quo." *Id.* In light of there being too much uncertainty as to when and what type of drilling, if any, would occur on the contested leases, the Tenth Circuit ruled that

¹⁵ SUWA also challenged the Board's decision in *William C. Kirkwood*, 175 IBLA 292, 319-20 (2008), holding, *inter alia*, that the leases were suspended as of the date complete plans of operation were filed.

¹⁶ The Tenth Circuit explained: "The doctrine of standing and ripeness substantially overlap in many cases. . . . 'The standing question thus bears close affinity to questions of ripeness – whether the harm asserted had matured sufficiently to warrant judicial intervention.'" 707 F.3d at 1157 (quoting *Warth v. Seldin*, 422 U.S. 490, 499 n. 10 (1975)).

SUWA would suffer no hardship from delayed review, and concluded that their suit was premature. *Id.* at 1160-61.

Like the SOPs granted to Ursa and SG, the suspension at issue in *SUWA v. Palma* prohibited “entering upon, exploring, or otherwise impacting the leaseholds” while the application was pending. *Id.* at 1159-60. The reasoning of the Tenth Circuit applies to the SOPs being challenged in these appeals. SG and Ursa emphasize the similarities:

Here, because no surface disturbing activity can be approved on the Leases until the remedial NEPA has been completed, the SDR Decisions simply maintained the no-oil-and-gas development *status quo*. Certainly no APDs can be approved, no structures can be installed, and no wellsite preparations can be performed for or on behalf of SG and Ursa. As such, Appellants’ interests are unaffected by the SDR Decisions: Appellants use of the Thompson Divide area is no more constrained today than it was prior to the SDR Decisions and no Local Government road, bridge or other infrastructure was or is now subject to the impacts of oil and gas activity as a result of the SDR Decisions. Similarly, the suspension of the Leases creates no conflict with Local Government laws or zoning regulations because the SDR Decisions allow for nothing more than the no-oil-and-gas *status quo*.

SG Interests I, LTD and Ursa Piceance LLC’s Reply in Support of Motion to Dismiss (SG/Ursa Reply) at 4-5. SG/Ursa properly point out that “[a]ny harm that could possibly flow from the eventual development of the Leases is further attenuated by virtue of the fact that the SDR Decisions do not ‘maintain’ or ‘extend’ the Leases as Appellants argue,” and that “not only do the Lease suspensions simply maintain the no-oil-and-gas-development *status quo*, they specifically disallow any surface disturbing activity until completion of the remedial NEPA.” *Id.* at 5.

Appellants rely upon the Board’s decision in *Three Forks*, 171 IBLA at 329, in arguing that BLM’s decisions approving the SOPs adversely affect their interests. In that case, the Board held that Three Forks Ranch, a working interest owner of unitized substances in the Focus Ranch Unit, was adversely affected by BLM’s decision to expand an oil and gas unit, for purposes of requesting SDR. Under 43 C.F.R. § 3185.1, a “party” may request SDR if it is “adversely affected” by a decision, order, or instruction issued under the unit agreement regulations. Three Forks argued before the Board that expansion of the unit would “have the effect of continuing leases that would otherwise have expired or will expire in the near future.” 171 IBLA at 329. Three Forks claimed that the result of unit expansion would be the drilling of wells on lands that Three Forks either owned or used in the conduct of its business of providing hunting and fishing opportunities to paying guests at its ranch. *Id.* Three Forks asserted that drilling activities, and to a lesser extent production activities, would

interfere with, and detract from, the wilderness experience of its guests and diminish their hunting opportunities. *Id.* The Board held that Three Forks, a working interest owner of unitized substances, was adversely affected by BLM's decision expanding an oil and gas unit for purposes of requesting SDR.

Appellants place undue emphasis on the Board's holding in *Three Forks*. A BLM decision expanding an oil and gas unit and continuing leases that would otherwise expire, with the result that wells may be drilled immediately on lands owned or used by a working interest owner, is clearly distinguishable from the present case. The SOP decisions prohibit on-the-ground activity pending the outcome of BLM's NEPA review, and BLM may decide to void those Leases, as it did the three leases at issue in *Pitkin County*. Apr. 9, 2013, CRVFO Decision at 2. Moreover, the Board in *Three Forks* recognized that the facts in that case were distinguishable from the situation in *SUWA*, 148 IBLA at 119, stating that the allegations of injury in a case challenging suspension were "hypothetical, rather than real and immediate." 171 IBLA 329 n.6; *see also Colorado Open Space Council*, 109 IBLA at 280. At this stage, any injury to Appellants is contingent upon the conclusions reached from the NEPA review that is presently ongoing. The adverse impact—regardless of how Pitkin County and the Workshop define it—"is merely hypothetical," and "it is premature for this Board to decide the matter." *Laramie*, 182 IBLA at 326 (quoting *Nevada Outdoor Recreation Association*, 158 IBLA at 209).¹⁷

The ultimate status of Ursa's and SG's Leases is speculative and unknown. At this stage, the threat of injury and its effect on Appellants is future, contingent, and hypothetical. "Standing will only be recognized where the threat of injury is real and immediate." *Legal & Safety Employer Research Inc.*, 154 IBLA at 172; *Laser, Inc.*, 136 IBLA at 274; *Salmon River Concerned Citizens*, 114 IBLA at 350. Appellants base their claim of standing on "[m]ere speculation that an injury might occur in the future." *Colorado Open Space Council*, 109 IBLA at 280. The Board will not recognize standing

¹⁷ The Workshop also relies on an unpublished Board order in which we held that environmental groups had standing to challenge BLM's decision to extend several leases. Order, *Natural Resources Defense Council*, IBLA 2012-272 (May 1, 2013). As BLM and Ursa/SG point out, the Board's unpublished orders are not binding precedent. *See Colorado Environmental Coalition*, 173 IBLA 362, 369 (2008). Regardless, as with *Three Forks*, this unpublished order is distinguishable on its facts. The operator requested lease extensions and related APDs to facilitate plans for well development planned to begin 6 months later. Because there was no contingency, the Board stated that "[t]he adverse effect in this case is no more remote or speculative than it would be in a decision to initially include parcels in a lease." Order at 3. By contrast, as in *SUWA v. Palma*, development of Ursa's and SG's leases is contingent on "future events that may not occur as anticipated, or indeed may not occur at all." 707 F.3d at 1160.

in such a case. *See Laramie*, 182 IBLA at 326 (“If the adverse impact complained of ‘is contingent upon some future occurrence’ or ‘is merely hypothetical, it is premature for this Board to decide the matter.’”); *Powder River*, 180 IBLA at 45 (“[M]ere speculation that an injury might occur in the future will not suffice.”); *Nevada Outdoor Recreation Association*, 158 IBLA at 209-10; *Blackwood & Nichols Co.*, 139 IBLA at 229 (“[W]here an adverse impact on a party is contingent upon some future occurrence, or where the adverse impact is merely hypothetical, it is premature for this Board to decide the matter.”); *Colorado Open Space Council*, 109 IBLA at 280.

C. *Diversion of Resources as an Adverse Effect*

[2] Appellants argue that BLM’s approval of the SOPs has required them to divert resources away from their respective operations and programs, and that this “diversion of resources” is an adverse effect for purposes of standing. Workshop’s Response at 19-20; Local Governments’ Response at 6. As explained below, neither the Workshop nor the Local Governments has shown any causal relationship between approval of the SOPs and any diversion of resources, and, therefore they have failed to show the essential nexus to establish standing. *See Colorado Open Space Council*, 109 IBLA at 280 (“[T]here must be an injury in fact; mere speculation that an injury might occur in the future will not suffice. *There must, in short, be a causal relationship between the action undertaken [by BLM] and the injury alleged.*” (emphasis added)).

The Workshop alleges that by keeping the leases from expiring, the SOPs have required it to “incur substantial costs independent of the expense of bringing its appeal.” Workshop’s Response at 19. In support of this argument, the Workshop submits the Declaration of Peter Hart (Hart Decl.), who is a Conservation Analyst and Staff Attorney for the Workshop, in which he avers that had the Leases expired on their expiration dates in 2013, the Workshop could have focused on obtaining permanent protections against future leasing and development in the Thompson Divide. He claims that in monitoring the Leases, the Workshop has made site visits to ensure that Ursa and SP have not begun development, and has submitted information requests to BLM and the Forest Service to confirm the status of the Leases. Hart Decl. (Workshop’s Response, Ex. B) at 7-8. He asserts that the Workshop has had to allocate “hundreds of hours of staff time and sizeable out-of-pocket costs” to monitoring the leases and “ensur[ing] that the 25 leases are not developed.” *Id.* at 7.

In addition, Hart states that because the Leases have not expired, the Workshop has had to expend considerable resources to undertake public outreach and education to inform its members and partners of the status of the Leases. Hart asserts that this outreach and education is necessary because of the “controversial” nature of the SOPs, and that much of this public outreach, including various public events, costs money and requires staff time from the Workshop’s organizers and other staff. *Id.* Hart asserts that the Workshop would have used those resources to educate its members on

other important public land issues, to organize hikes in areas it is working to protect, and to undertake public land restoration projects with its members and Federal agencies. *See id.* at 8. The Workshop asserts that this diversion of resources “frustrates” its mission, a “core part of [which] involves research and public education about the ecological integrity of local landscapes and public lands.” Workshop’s Response at 19.

The Local Governments argue that by granting the SOPs and launching an EIS process, the Local Governments had no choice but to participate as a cooperating agency, stating that such participation “was the Local Governments’ only plausible means of continuing to defend their core interests at risk from these leases.”¹⁸ Local Governments’ Response at 6 (citing Declaration of Ellen Sassano (Sassano Decl.), ¶ 7). They assert that it was necessary for the Local Governments to “commit their resources as cooperating agencies to helping BLM prepare an EIS.” *Id.* at 4. According to the Local Governments, “[h]ad BLM denied the SOPs and refused to extend the leases, these expenditures would have been eliminated altogether or greatly reduced.” Local Governments’ Response at 7 (citing Declaration of Christopher G. Seldin (Seldin Decl.), ¶ 6).

A review of the factual bases for the diversion of resources argument advanced by the Workshop and the Local Governments demonstrates that they have not shown a nexus between their claimed expenditure of resources and BLM’s SOP decisions. We do not find the argument persuasive that there is a likelihood that Ursa and SG will violate the terms of the SOPs, or that BLM will ignore or fail to enforce such violations, necessitating the Workshop’s monitoring efforts. We have noted that the CRVFO Decisions, as upheld in the SDR Decisions, provide that if Ursa or SG violates the prohibition on ground-disturbing activities the subject Lease will terminate. *See* SDR Decisions at 3-4. The prospect that Ursa and SG will violate the terms of the SOP decisions, and that BLM will ignore those violations or fail to take appropriate action on such violations, could not be more speculative and hypothetical.

We likewise reject the Workshop’s argument that the SOPs have given rise to the need for public outreach and the education of its members and partners as to the status of Ursa’s and SG’s leases, that meeting this need will require the diversion of resources

¹⁸ The Local Governments assert standing not based on harms to their citizens, but instead based on harms to themselves. State or local governments do not have standing as *parens patriae* (i.e., a representative of its citizens) to bring an action against the Federal Government. *Alfred L. Snapp & Son v. Puerto Rico*, 458 U.S. 592, 610 n.16 (1982); *State of Missouri Dep’t of Natural Resources*, 142 IBLA 201, 207 (1998); *Blaine County Board of Commissioners*, 93 IBLA 155, 157-58 (1986) (the Federal Government, not the State or local governments, represents citizens as *parens patriae* in their relations to the Federal government).

that could be expended on other matters, and that this amounts to an adverse effect under 43 C.F.R. § 4.410. The Workshop was already engaged in public outreach related to issues concerning the subject leases prior to BLM's approval of the SOPs. See SDR Decisions at 2-3. The Workshop's decision to spend time and resources explaining to the public that BLM has suspended the leases, pending a future decision on whether to terminate, modify, or allow them to expire, is a matter of the Workshop's election. We fail to see a nexus between the SOP decisions and the Workshop's decision to engage in the public outreach it describes.

The Workshop further contends that had the Leases not been suspended, the need for NEPA review would have been much more limited in scope or even eliminated, and the demands on its organizational resources also would have been significantly reduced or eliminated. Hart Decl. (Workshop's Response, Ex. B) at 7. The Local Governments also assert that but for the SOPs "NEPA analysis [would have been] unnecessary since the leases would have, under this Board's precedent and BLM's own rules, simply expired for lack of development." Local Governments' Response at 6. The Workshop and the County are simply incorrect in their argument that allowing SG's and Ursa's leases to terminate would have rendered unnecessary the preparation of an EIS to address the impacts of leasing in the WRNF. BLM would have needed to conduct the NEPA review in the absence of the SOPs. BLM began its own independent review of the environmental impacts of oil and gas leasing and development in the WRNF because of the Board's decision in *Pitkin County*, 173 IBLA 173. BLM makes the point in its Reply that its "decision to undertake NEPA analysis for previously issued leases in the WRNF is independent from the suspension decisions." BLM's Reply at 11. The analysis undertaken by BLM to remedy that deficiency will have a scope beyond the Leases at issue here, and will address a total of 65 leases issued between 1995 and 2012 within the WRNF. See 79 Fed. Reg. 18,576 (Apr. 2014); BLM's Reply at 11. Allowing SG's and Ursa's leases to terminate would not prevent BLM from requesting and obtaining consent from the Forest Service to re-offer the subject parcels should BLM's NEPA review support such an action. It is ironic that having prevailed on their argument in *Pitkin County* that BLM was required to conduct its own NEPA review of oil and gas leasing and development in the WRNF, Appellants now complain that they are injured by their perceived need to participate in that NEPA process. See SG/Ursa Motion at 18 n. 17. Moreover, participation by the Appellants in the NEPA process is voluntary, as is the level at which they elect to participate. See BLM's Reply at 11.

The Workshop and the Local Governments rely upon Federal court decisions to support their argument that they have been harmed by a drain on resources. We have long acknowledged that the Department's requirement of standing is properly informed by the judicial requirement of "injury in fact," noting that decisions by Federal courts concerning judicial standing "provide a useful *guide* as to the types of interests which have been deemed relevant and the concerns which are properly considered in adjudicating administrative appeals." *In re Pacific Coast Molybdenum*

Co., 68 IBLA 325, 332 (1982 (emphasis added)); see *Western Watersheds Project v. BLM*, 182 IBLA at 7; *Animal Protection Institute of America*, 117 IBLA 208, 209 (1990); *In re Pacific Coast Molybdenum*, 68 IBLA at 332 (“[T]here is no necessary congruity between the standing requirements which control the availability of judicial review and those which animate the arena of administrative practice.”)

We are not persuaded, however, that the Federal court cases cited by the Workshop support its argument that a diversion of resources constitutes an adverse effect for purposes of standing before the Board. As explained by the U.S. Supreme Court in *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972), actions contrary to an organization’s mission do not create an injury if the organization’s activities are not somehow impeded. The challenged action must, in some identifiable way, directly affect or be likely to directly affect the ongoing activities of the organization. A mere interest in a perceived problem, no matter how longstanding the interest or how qualified the organization may be in evaluating the problem, is not sufficient by itself to render the organization “adversely affected” or aggrieved. 405 U.S. at 739. Furthermore, a party cannot manufacture standing; Federal courts have held that an organization’s expenditure of resources on a lawsuit, including litigation expenses, does not constitute an injury sufficient to establish standing. *Equal Rights Center v. Post Properties, Inc.*, 633 F.3d 1136, 1138-40 (D.C. Cir. 2011); see also *Valle de Sol, Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 1876 (2014) (citing *La Asociacion de Trabajadores de Lake v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010)); *The Center for Law and Education v. Department of Education*, 396 F.3d 1152, 1161-62 (D.C. Cir. 2005); *National Treasury Employees Union v. United States*, 101 F.3d 1423, 1429 (D.C. Cir. 1996) (“[C]onflict between a defendant’s conduct and an organization’s mission is alone insufficient to establish Article III standing. Frustration of an organization’s objectives ‘is the type of abstract concern that does not impart standing.’” (quoting *National Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1433 (D.C. Cir. 1995))).

We recognize that in *Havens Realty Corp. v. Coleman [Havens]*, 455 U.S. 363, 379 (1982), relied upon by the Local Governments, the U.S. Supreme Court held that under certain circumstances a drain on resources may create a harm to an organization itself, and provide a basis for judicial standing under Article III of the U.S. Constitution. In *Havens*, a housing services organization alleged that Havens made apartments in one complex available to whites, while directing blacks to a different complex, a practice known as racial steering. The organization, Housing Opportunities Made Equal (HOME), was formed to achieve equal access to housing, and provided counseling and referral services for low and moderate income home-seekers. HOME was found to devote significant resources to identifying and counteracting the defendant’s discriminatory practices. The Court held there was an injury in fact to the organization, sufficient to confer standing: “Such concrete and demonstrable *injury to the organization’s activities*—with the consequent drain on the organization’s

resources—constitutes far more than simply a setback to the organization’s abstract social interests.” *Havens*, 455 U.S. at 379 (emphasis added). *Id.*

Following *Havens*, the bulk of the Federal court case law regarding the drain on resources doctrine has concerned discrimination (fair housing, equal employment, civil rights law) and immigration issues. These cases stand for the proposition that for an organization to establish judicial standing, it must show that the challenged action “has ‘perceptibly impaired’ their ability to carry out their missions.” *Valle del Sol, Inc.*, 732 F.3d at 1018 (quoting *Havens*, 455 U.S. at 379). An organization has “direct standing to sue [when] it show[s] a drain on its resources from both a diversion of its resources and frustration of its mission.” *Id.* (quoting *Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1219 (9th Cir. 2012)); *see also Abigail Alliance for Better Access to Developmental Drugs v. Von Eschenbach*, 469 F.3d 129, 132-33 (D.C. Cir. 2006); *Scenic America, Inc. v. U.S. Department of Transportation*, 983 F. Supp. 2d 170, 176-79 (D.D.C. 2013);¹⁹ *The Humane Society of the United States v. U.S. Postal Service*, 609 F. Supp. 2d 85, 89, 90-92 (D.D.C. 2009).

The Workshop and the Local Governments cite a few cases in which Federal courts have applied the *Havens* rule to grant standing in the context of voter identification laws and voter registration. *Crawford v. Marion County Election Board.*, 472 F.3d 949, 951 (7th Cir. 2007), *aff’d*, 553 U.S. 181, 189 n.7 (2008); *see also Common Cause of Georgia v. Billups*, 554 F.3d 1340, 1350-51 (11th Cir. 2009); *Common Cause of Colorado v. Buescher*, 750 F. Supp. 2d 1259, 1270-71 (D. Colo. 2010). In addition, they cite a case in which a Federal court granted standing under that doctrine to challenge policies on an experimental drug treatment program. *Abigail Alliance for Better Access to Dev. Drugs v. Eschenbach*, 469 F. 3d 129, 132-33 (D.C. Cir. 2006). We are also aware that Federal courts have applied the doctrine to confer standing on animal rights organizations. *E.g., People for the Ethical Treatment of Animals, Inc. [PETA] v. U.S. Dep’t of Agriculture*, 7 F. Supp. 3d 1, 7-9 (D.D.C. 2013); *Humane Society of the U.S. v. U.S. Postal Service*, 609 F. Supp. 2d 85, 91 (D.D.C. 2009). However, neither Pitkin County nor the Workshop cites to any case in which a Federal

¹⁹ In *Scenic America, Inc. v. U.S. Department of Transportation*, 983 F. Supp. 2d at 177-79, the U.S. District Court for the District of Columbia granted standing to an organization that challenged digital billboard guidance issued by the Department of Transportation (DOT). The Court held that due to DOT’s guidance, the organization, whose mission is to safeguard the visual character of communities and the countryside, must devote resources appearing at zoning board meetings to challenge particular billboards and educating local communities about the issues related to the different signs. *Id.* at 179. Such a drain on resources was found to confer standing on the organization.

court has applied the *Havens* doctrine in a situation sufficiently analogous to an oil and gas suspension to support their claim of standing.

In relying on *Havens* and other cases that apply the *Havens* doctrine, Appellants miss the crucial holding of those cases, *i.e.*, there must be a “concrete and demonstrable injury to the organization’s activities—with the consequent drain on the organization’s resources.” 455 U.S. at 379. This standard is consistent with the rule followed uniformly by the Board that for standing the alleged injury must be “real and immediate,” and the appellant’s burden is to “make colorable allegations of an adverse effect, supported by specific facts, sufficient to establish a causal relationship between the approved action and the injury alleged.” *Great Basin Mine Watch*, 182 IBLA at 59.

Applying the *Havens* doctrine and our precedent, we conclude that neither the Workshop nor the Local Governments has established the requisite causal connection between the SOPs and the harm alleged. They have not shown that the SOP decisions have caused the alleged diversion of resources or effects an “inhibition of their daily operations, an injury both concrete and specific to the work in which they are engaged.” *PETA v. U.S. Postal Service*, 7 F. Supp. 3d at 8 (quoting *Action Alliance of Senior Citizens of Greater Philadelphia v. Heckler*, 789 F.2d 931, 938 (D.C. Cir. 1986)).

D. Loss of Sales Tax Revenue as an Adverse Effect

[3] The Local Governments argue they have suffered an adverse impact through the loss of sales tax revenue resulting from the SOPs granted to Ursa and SP. BLM’s assessment is that “the loss of any tax revenue was due to the independent decisions of business operators that appear based on their assessment of future market forces far removed from the BLM’s extension of the environmental status quo through the suspension decisions at issue here.” BLM’s Reply at 9. Moreover, BLM asserts that “the Local Governments have not provided “specific facts, sufficient to establish a causal relationship between the approved action and the injury alleged.” *Id.* (quoting *Great Basin Resource Watch*, 182 IBLA at 58). We agree with BLM’s summary: “Any connection between the BLM decisions under review in this proceeding to the business owners’ investment decisions is so attenuated or far removed on a chain of causation (if the chain is not cut by intervening market factors), that BLM cannot reasonably be considered to have caused, as required by 43 C.F.R. § 4.410, the stated adverse effect to the tax base.” BLM’s Reply at 9.

What is clear in the tax-base cases relied upon by the Local Governments is that there must be a direct and concrete loss of a revenue source. *Wyoming v. Oklahoma*, 502 U.S. 437, 447-50 (1992), cited by the Local Governments, applies that standard. In that case, Wyoming brought a commerce clause challenge to an Oklahoma statute requiring Oklahoma coal-fired electric generating plants to burn a mixture of coal containing at least 10% Oklahoma-mined coal. Wyoming collected severance taxes

on coal extraction by mining companies in Wyoming that sold coal to four Oklahoma electric utilities. After Oklahoma's law went into effect, un rebutted evidence showed that Wyoming lost hundreds of thousands of dollars in severance taxes. The U.S. Supreme Court held that Wyoming had standing to sue Oklahoma because the statute "directly affect[ed] Wyoming's ability to collect severance tax revenues." 502 U.S. at 451. The Court noted that the circumstances were distinguishable from cases where standing had been denied because there was no "direct injury in the form of a loss of specific tax revenues." *Id.* at 448.

The Local Governments also cite to *Mount Evans Co. v. Madigan*, 14 F.3d 1444, 1451-52 (10th Cir. 1994), in which the Tenth Circuit held that Clear Creek County, Colorado, had Article III standing to challenge the Forest Service's decision not to rebuild a burned tourist facility in Clear Creek County. The facility sold food and souvenirs from which Clear Creek County benefited through a guaranteed revenue sharing agreement with the Forest Service, pursuant to which it would collect 25% of the facility's revenue, and through sales tax receipts. The Tenth Circuit found that the County had standing because it was undisputed that the Forest Service decision directly resulted in the loss of a proven revenue stream "guaranteed" to the County if the facility were rebuilt and the concessions reopened. 14 F.3d at 1448.

Both *Wyoming v. Oklahoma* and *Mount Evans Co. v. Madigan* apply the rule that standing to sue may be based on a loss of tax revenue if the loss is demonstrable and specific, *i.e.*, the loss of tax revenue cannot be speculative. The Local Governments attempt to rely on several Federal court cases to argue that standing based on the loss of tax revenue "does not hinge on the magnitude of the fiscal impact." Local Governments' Response at 15-16. In particular, the Local Governments point to *Wyoming v. DOI*, 674 F.3d 1220 (10th Cir. 2012), where the State of Wyoming challenged a rule limiting the number of snowmobiles in national parks, alleging that the rule would result in the loss of revenue. That case, however, does not deviate from the requirement that the loss of tax revenue must be concrete, rather than speculative. And, in fact, the Tenth Circuit held that the State did not have standing. Stating that "[p]etitioners bear the burden of proving they have suffered an 'injury in fact' that is 'concrete and particularized' and 'actual or imminent,' not 'conjectural' or 'hypothetical,'" the Tenth Circuit held that the State of Wyoming did not have standing because it had not shown that the rule resulted in the loss of fees. 674 F.3d at 1231-32 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

In alleging that the SOPs have impacted its sales tax revenue, the Local Governments rely upon the Declaration of Brook LeVan (LeVan Decl.), Executive Director of Sustainable Settings, a biodynamic farm and learning center approximately 4 miles south of Carbondale in Pitkin County. LeVan Decl. (Local Governments' Response) at 1. According to LeVan, Sustainable Settings' biodynamic agricultural practices adhere to a level of purity in production referred to as "beyond organic."

Id. at 2. It sells all of its agricultural products onsite, at its farm, and sales of its products result in sales taxes remitted to Pitkin County. *Id.* Current demand for the farm's products greatly exceeds what it has the capacity to produce, process, and sell, and for several years, Sustainable Settings has been planning to upgrade its facilities. *Id.* at 3-4. The "contemplated upgrade" includes a new barn with modern capabilities that would allow it to double or triple production and sale of its products, taxes on which would be paid to Pitkin County. *Id.* Furthermore, this project would involve an investment in excess of \$1 million in planning, construction, and permit fees. *Id.* The fees for submitting building permits would be paid to Pitkin County. *Id.* The Sustainable Settings farm is downstream of areas proposed for oil and gas development. *Id.* at 8.

According to LeVan, because of the "threat" that the Leases will be developed and its water supply affected, Sustainable Settings has delayed the facilities upgrade. *Id.* at 10. LeVan avers that had BLM allowed the leases to expire at the end of the lease terms, instead of granting the SOPs, Sustainable Settings would have moved forward with the facility upgrade. *Id.*

LeVan also alleges a negative impact on Carbondale's tax base. He states that Sustainable Settings has accounts with building materials suppliers located within the municipal limits of Carbondale, and that it would have sourced materials for the planned facilities upgrades from these suppliers. LeVan Decl. at 5. Had BLM allowed the oil and gas leases to expire (instead of suspending them), LeVan states that Sustainable Settings would have already moved forward with its facilities upgrade, instead of delaying the upgrade in light of uncertainty about the security of its water supply. *Id.*

We are not persuaded by LeVan's hypotheses. He asserts that there is already a demand for more products than Sustainable Settings can produce, process, and sell, and that Sustainable Settings has planned for years to upgrade its facilities. LeVan offers no support for his claim that not proceeding with the upgrade in the past, even with this demand, is due to the potential for oil and gas development upstream from Sustainable Settings' farm. Nor does LeVan substantiate his claim that Sustainable Settings has forgone upgrading its facilities because of the SOPs granted to Ursa and SP. He does not assert that Sustainable Settings has cancelled the upgrade, or that actual plans for the upgrade have been prepared or altered as a result of the SOPs. In light of these facts, we are not convinced that Sustainable Settings' decision not to upgrade its facilities is attributable to the SOPs. Moreover, there is no evidence that Sustainable Settings is under a commitment to purchase building materials from local businesses, if and when it proceeds with the upgrade. The upgrade is hypothetical, and the purchase of local materials, even if the upgrade is implemented, is also hypothetical. The decision of Sustainable Settings to not upgrade its facilities may be based upon any number of considerations completely unrelated to the SOPs. Thus,

we see no nexus between the SOPs and the loss of tax revenue claimed by the Local Governments.

The Local Governments attempt to characterize the negative impacts as real and immediate by stating that the area where the Leases are located is stigmatized by the threat of oil and gas development. For example, Carbondale asserts that “the mere threat of drilling on these leases, and accompanying publicity, can threaten the Town’s reputation as an outdoor destination, and associated tax revenues.” Local Governments’ Response at 11. According to Darren Broome, a local business owner, “just the mention of proposed oil and gas development in an area can cause tourists to continue traveling past our valley into an are[a] which does not have these concerns stripping our area of valuable economic opportunities.” *Id.* (quoting Declaration of Darren Broome (Broome Decl.) at ¶¶ 9 and 10). Such a perception “threatens the Town’s economic potential, ‘which could lower sales tax revenue’ and the Town’s operational budget.” *Id.* at 11-12 (quoting Broome Decl. at ¶ 10).

Carbondale’s claimed injuries, however, are based upon “fears of hypothetical future harm.” *Clapper v. Amnesty International USA*, 133 S. Ct. 1138, 1151 (2013). We are unpersuaded that Carbondale’s tax base will suffer because tourists will avoid the area at the mere mention of possible oil and gas development. The Local Governments cannot demonstrate that potential future development—development that may not materialize—impacts the present experience, especially when use and enjoyment of the area is preserved during the term of the SOP. Any future determination by BLM, upon completion of its NEPA review, would be followed by APDs requiring further BLM action, including site-specific environmental review. BLM’s actions would be subject to Board review by any adversely affected party with standing to appeal BLM’s action. Again, until BLM completes its NEPA review and determines the status of Ursa’s and SG’s Leases, any surface-disturbing activity is prohibited and will subject the leases to termination. *See* SDR Decisions at 3-4.

Oil and gas development may never occur on the Leases, and if it does, it may be years in the future. There is simply no causal relationship between BLM’s approval of the SOPs and the injury alleged, *i.e.*, lower tax revenue, that would point to an adverse effect under 43 C.F.R. § 4.410. *See Great Basin Resource Watch*, 182 IBLA 55, 58 (2012). Carbondale’s fears, no matter how genuine, do not establish an adverse impact for purposes of standing under 43 C.F.R. § 4.410.

The Local Governments also rely on the Declaration of Andrew Niemeyer (Niemeyer Decl.), a real estate investor who owns a house which he operates as a vacation-rental property, and two buildings in downtown Glenwood Springs which he leases and are operated as restaurants. Niemeyer Decl. (Local Governments’ Response) at 2. His property is located between Glenwood Springs and the Sunlight Ski Area. He states that his vacation-rental property is a higher-end residence for which peace and quiet are significant amenities. *Id.* Prior to BLM’s decision to

suspend the oil and gas leases, he claims he made annual capital improvements to that vacation-rental property on a regular basis since 2005. *Id.* Had BLM allowed the leases to expire, instead of granting SOPs, he states he would already have made further significant capital improvements to the property. *Id.* at 5. He asserts that improvements to this property would result in the generation of sales tax revenues for Glenwood Springs, because he purchases materials at local stores. Furthermore, for capital improvements, he sources materials and labor locally, and states he therefore spends significant sums in Glenwood (and Carbondale). *Id.* at 8. This includes building materials and other supplies for which he pays sales taxes to Glenwood Springs (and Carbondale). *Id.*

Again, the Board finds Niemeyer's Declaration lacking in sufficient specificity to constitute a concrete harm. He provides no specific amounts, or even a ballpark estimate, of how much he would have spent in Glenwood Springs, or how much tax revenue Glenwood Springs would have realized from his purchases. Moreover, although he has made purchases in the past in Glenwood Springs, he has provided no evidence that he would have done so for the purchases in question. In addition, as we concluded in our discussion of Sustainable Settings' upgrade plans and purchase of materials from suppliers in Glenwood Springs (and Carbondale), *see* LeVan Decl. at 5, we find a lack of specificity as to the tax revenues lost and that the losses are speculative. We see no nexus between Glenwood Springs' claim of lower tax revenue, resulting from decisions made by Niemeyer in the exercise of his business judgment, even assuming there has been such a loss, and BLM's decision to approve the disputed SOPs. To the extent Niemeyer is concerned about potential adverse consequences of oil and gas development, if and when that development occurs, we decline to find standing when it hinges on subjective fears and uncertain predictions of the future, as it does here.

The loss of tax revenue alleged by the Local Governments is premised on fears about potential negative consequences that may accompany oil and gas development if and when it is ultimately approved by BLM. Whether Sustainable Settings will eventually see a decline in sales because of oil and gas drilling and development on the Leases is completely hypothetical. The Local Governments have not shown any connection between the SOPs and the business decisions of Sustainable Settings or Niemeyer that they argue will result in lost tax revenue. They have not demonstrated that there is a present loss of tax revenue, or even that a future loss is substantially likely. Their suppositions and fears about hypothetical harms do not provide a basis for standing under 43 C.F.R. § 4.410. *Cf. Clapper v. Amnesty International USA*, 133 S. Ct. at 1151 (parties "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending."); *Laramie*, 182 IBLA at 326; *Blackwood & Nichols*, 139 IBLA at 229 (same).

E. Preemption of Local Zoning Plans as Adverse Effect

The Local Governments further claim harm from what they characterize as substantially likely impacts to roads providing access to, and real property located near, Ursa's and SG's leases. Local Governments' Response at 3, 7-8, 20. However, the alleged harms they describe are from the possible development of the Leases, not from the SOPs, which prohibit ground-disturbing activities. *See id.* Such alleged harms are not only speculative, but we see no nexus between eventual impacts to roads and real property and the SOPs, which preserve the *status quo*. *See Great Basin Resource Watch*, 182 IBLA at 58; *Powder River*, 180 IBLA at 45; *Colorado Open Space Council*, 109 IBLA at 280.

In a somewhat novel argument, Pitkin County contends that its zoning plans prohibit oil and gas development where the Leases are located, and that the SOPs, by extending the Leases, undermine those zoning plans. Pitkin County complains that "[h]ad the leases expired, the Forest Service's new management plan for the area would have ensured the County's zoning was respected," consistent with FLPMA and NFMA. Local Governments' Response at 14. The County further argues that BLM's issuance of the SOPs preempts the County's zoning plan, and that the "act of preemption" is an injury to the integrity of its own enactments. *Id.* at 14. Pitkin County states that the SOPs allow Ursa and SG to pursue APDs and obtain other approvals needed to perfect their development rights, and that both companies are doing just that. *Id.* Pitkin County complains that because it is required to process these applications and coordinate its permitting activities, and that in July of 2013, it participated in onsite inspections held to consider APDs, there can be no claim that permitting activities have been halted by the SOPs. *Id.* Pitkin County concludes: "Although preemption alone is sufficient to establish cognizable injury, the County's need to expend staff time and other resources in connection with applications that violate its zoning does reinforce the harm." *Id.*

Even though Pitkin County's zoning code "prohibits oil and gas development where the SG and Ursa leases are located," Local Government's Response at 5, such a prohibition would not be enforceable as to Federal leases in Colorado.²⁰ *See SG/Ursa Reply* at 10. The Constitution requires that any conflict between Pitkin County's

²⁰ SG/Ursa points out that in her Declaration, Sassano (Pitkin County's Senior Long Range Planner) does not cite to a local resolution or regulation banning oil and gas activity in the area where the SG and Ursa Leases are located. SG/Ursa notes that she does cite to the Pitkin Land Use Code § 3-4-80, which states that the RS-30 zone district mentioned at ¶ 4 of Sassano's Declaration "is intended to be applied primarily in the Crystal River and the Snowmass-Capitol Creek area," and not to lands, such as those where SG's and Ursa's Leases are located, that lack similar physical characteristics to those populated valley areas identified in the Code. SG/Ursa's Reply at 10 n. 5.

zoning code and the authority of BLM, with concurrence of the Forest Service, to issue the Leases would be resolved in BLM's favor.²¹ See *United States v. The Dredge Corporation*, 54 IBLA 281, 293 n.5 (“[A] local zoning ordinance would be preempted to the extent to which it conflicted with the Federal mining laws.”).²² We reject Pitkin County's argument that its authority to enforce a ban on oil and gas leasing and development on Federal lands is a legally cognizable interest that is subject to injury by Federal and State preemption.

As for Pitkin County's argument that if the leases had expired rather than being suspended, the Forest Service's new management plan for the area would have ensured that Pitkin County's zoning was “respected,” *id.* at 14, we find the alleged harm to be speculative, and based on an overstatement of the Forest Service's obligations under the National Forest Management Act (NFMA) and the Federal Land Policy and Management Act of 1976 (FLPMA). Pitkin County specifically cites to the NFMA,

²¹ In addressing the Local Government's preemption argument, SG/Ursa and BLM place BLM's issuance of the Leases, and the SOPs at issue, into the relevant statutory and regulatory framework. SG/Ursa and BLM begin with the Property Clause of the U.S. Constitution, which provides that Congress has the power to dispose of and make rules and regulations respecting property belonging to the United States. See *California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572, 580, 593 (1987). The subject Leases were issued under the Mineral Leasing Act of 1920, 30 U.S.C. § 181, *et seq.* (2012), and implementing regulations. Oil and gas operations in Colorado are governed by the Oil and Gas Conservation Act, C.R.S. § 34-60-101, *et seq.*, which established the Colorado Oil and Gas Conservation Commission (COGCC) with the power to enact and enforce rules, regulations, and orders and to regulate oil and gas activity in Colorado. In 1991, COGCC and BLM entered into a Memorandum of Understanding (MOU), with COGCC having primary jurisdiction over matters involving Federal lands and minerals in Colorado. In a July 110, 2009, MOU among COGCC, BLM, and the Forest Service, the parties agreed to act cooperatively within the framework of the 1991 MOU and COGCC rules governing oil and gas operations on Federal lands in Colorado. This 2009 MOU recognizes local government involvement in Lease development only to the extent such involvement is consistent with the Federal land use plan. SG/Ursa's Reply at 10-11; *see also* BLM's Reply at 3-4.

²² As BLM emphasizes, to the extent the Local Governments intend to challenge Federal preemption itself as a basis for standing, “they are in the wrong forum.” BLM Reply at 4 n.4. BLM correctly points out that this Board does not have jurisdiction to hear and rule on Constitutional questions or to provide relief for Constitutional violations. See, e.g., *George Kendall*, 184 IBLA 71, 77 (2013); *Henry Deaton*, 182 IBLA 274, 285 n.18 (2012); *Mark Patrick Heath*, 175 IBLA 167, 196 (2008).

16 U.S.C. § 1604(a) (2012), and FLPMA, 43 U.S.C. § 1712(c)(9) (2012), in describing Federal law as “encourag[ing] consistency” between Federal, State, and local plans.²³ Local Governments’ Response at 2. These statutory provisions provide that the Forest Service and BLM must consider local government’s interests in developing land and resource management plans (Forest Service) and resource management plans (BLM), assist in resolving inconsistencies (to the extent practical), and provide for meaningful involvement. However, they do not dictate that the agencies follow local zoning laws that are inconsistent with Federal law or policy, something Pitkin County acknowledges. Local Governments’ Response at 5 (“[F]ederal agencies are not *required* to respect the County’s zoning enactments, and may preempt them.”) (emphasis in original).

There is no basis for assuming that, absent the SOPs, the Federal Government’s consideration of local laws, such as those banning oil and gas development, and its attempts to resolve, to the extent practicable, inconsistencies with Federal plans, would result in an outcome that the County would view as favorable. The alleged harm of the suspensions is therefore entirely speculative. *Cf. Laramie*, 182 IBLA at 326 (if the adverse impact complained of is contingent upon some future occurrence, it is premature for this Board to decide the matter); *Blackwood & Nichols*, 139 IBLA at 229 (same).

The remainder of Pitkin County’s argument dovetails into its diversion of resources argument, *i.e.*, that the County has had to expend time reviewing permit applications and related site visits it otherwise would not have made had the leases expired. Even if we were to adopt the diversion of resources doctrine for purposes of standing before the Board, the processing of permits and related activities fall within the normal ambit of a local government’s regulatory responsibilities. We decline to find harm to a government in having to carry out its duties.

Conclusion

For the reasons discussed herein, all Appellants lack standing before the Board under 43 C.F.R. § 4.410 to appeal the SDR Decisions upholding SOPs granted to Ursa

²³ The section of the NFMA that Pitkin County cites provides that the Forest Service shall coordinate with the land and resource management planning processes of State and local governments and other Federal agencies. 16 U.S.C. § 1604(a) (2012). The section of FLPMA that Pitkin County cites provides that BLM shall “assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials.” 43 U.S.C. § 1712(c)(9) (2012); *see also* 43 C.F.R. § 1610.3-2.

and SG pending completion of the NEPA review ordered in *Pitkin County*. None of the Appellants has met its burden to show any concrete and immediate injury resulting from BLM's decisions to grant the SOPs. Accordingly, we dismiss these appeals.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R § 4.1, we grant the motions to dismiss the appeals for lack of standing. In addition, we deny Appellants' motion to complete the record as moot.

/s/

James F. Roberts
Administrative Judge

I concur:

/s/

Amy B. Sosin
Administrative Judge